

FILED
DISTRICT COURT OF GUAM

**James T. Mitchell
Guam Police Department
233 Central Avenue
Tiyan, Guam 96913
(671) 475-8509 • (671) 472-4036 (fax)
email: james.mitchell@gpd.guam.gov
Attorney for defendants Suba, Guam Police Department,
Artui and Anciano**

MAR 24 2010 *APG*

**JEANNEG. QUINATA
CLERK OF COURT**

IN THE DISTRICT COURT OF GUAM

**JAMES L. ADKINS,)
Plaintiff,) Civil Case No. 09-00029
)
vs.)
)
PAUL SUBA, CHIEF OF GUAM POLICE)
DEPARTMENT, etc., et al.,)
)
Defendants.)
)
SUPPLEMENT TO THE REPORT TO
THE COURT REGARDING RETURN OF
CELL PHONE**

The attached documents are filed in the spirit of the doctrine of completeness and are intended to supplement the documents Plaintiff filed on March 18, 2010. The attached documents are: (1) a cover letter to Anita P. Arriola with an evidence analysis and incident report attached; and (2) a series of e-mails between Anita P. Arriola and James T. Mitchell. In addition <http://www.articlesnatch.com/Article/Water-Damage--Moisture--And-Your-Bell-Phone/694191> is submitted for the Court's perusal at the appropriate time. This link pertains to moisture and water damage to cell phones.

Dated this 24th day of March, 2010.

**GUAM POLICE DEPARTMENT
Attorney for Defendants Guam Police Department,
Paul Suba, Serafino Artui, and D.B. Anciano**

By: 
JAMES T. MITCHELL



GUAM POLICE DEPARTMENT

DIPÂTTAMENTON POLISIAN GUAHAN

Government of Guam



FELIX P. CAMACHO
Governor of Guam

MICHAEL W. CRUZ, M.D.
Lieutenant Governor

Bldg. 233 Central Avenue, Tiaan, Guam 96913
P.O. Box 23909 Barrigada, Guam 96921
Telephone: (671) 475-8473 (Switchboard); (671) 475-8508 / 8509 / 8512
Fax: (671) 472-4036

PAUL R. SUBA
Chief of Police

COLONEL JOAQUIN G. REYES
Police Commander

March 17, 2010

Anita P. Arriola, Esq.
Law Offices Arriola, Cowan & Arriola
259 Martyr Street, Suite 201
Calvo-Arriola Building
Hagatña, Guam 96910

Re: Evidence Analysis of Mr. Adkins' Cell Phone

Dear Anita:

I have enclosed a copy of the subject evidence analysis and an incident report. Please be advised that the software mentioned in the evidence analysis is designed to read data on media without altering MAC times; that is, without altering the data. GPD does have software to reconstruct deleted or damaged files. GPD opted not to use that software in order to avoid the risk of contamination. In other words, GPD wanted to preserve the data as it existed.

Sincerely,

JAMES T. MITCHELL
Legal Advisor

Enclosure
JTM:scr

cc: Anita P. Arriola

APR 20 2010
MICHAEL W. CRUZ, LIAISON

APR 20 2010

APR 20 2010
by Vanessa 4-29



GUAM POLICE DEPARTMENT
DIPÂTTAMENTON POLISIAN GUAHAN
GOVERNMENT OF GUAM
HAGÂTÑA, GUAM 96932

March 17, 2010

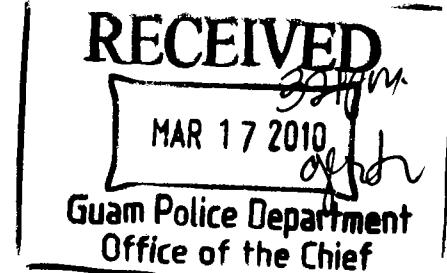
MEMORANDUM

To: Mr. James Mitchell
GPD Legal Advisor

Via: Channels *JFM*

From: Property Control Officer John F. Taitano
Evidential Control Section

Subject: **Incident Report**
Re: **Case Number 09-25982 Confiscated Property**



Sir, this missive is submitted in reference to a confiscated property (Case# 09-25982) described as a: beige Nokia Cellular Phone E Series E71.

Said item was confiscated from James L. Adkins by Officer S. Artui on October 4, 2009 and deposited at the Evidence Box located at the Hagatna Police Precinct. On October 5, 2009 at 11:00 a.m., said item was retrieved from the Evidence Box by Officer A.J. Kamminga, processed and stored at the Evidential Control Section (ECS), building #235 Central Avenue, Tiyan.

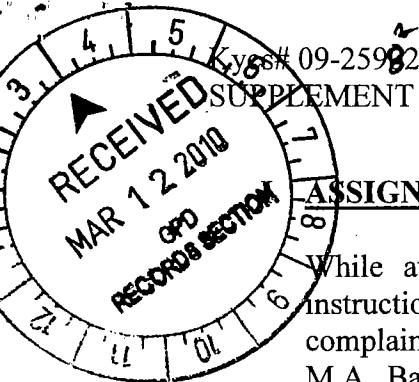
On December 7, 2009 at 3:15 p.m., by verbal direction from Mr. Mitchell, I had relinquished said item to Officer J.P. Rodriguez for the purpose of analysis of evidence. At 4:55 p.m., same date, Officer Rodriguez had relinquished said item back into ECS custody by which I had secured said item.

On March 10, 2010, by court order, I had relinquished said item to Mr. Adkins. Although I cannot note the condition of the item when it was initially retrieved from the Evidence Box, I can however say that the climate/condition of the evidence room where the item was secured is controlled by a split air condition unit which is kept running 24 hours a day. The clear plastic bag that the item was stored in was sealed and turned in by the confiscating officer. Although Mr. Adkins did state that the bag the phone was stored was not the original bag that he placed the item in, please note that that was the bag that was turned in by the confiscating officer. It is also noteworthy to add that when the bag was retrieved on December 7, 2009, turned in the same day and released on March 10, 2010, the bag and contents appeared to be dry and showed no signs of moisture. On March 10, 2010, I had opened the bag in the presence of Mr. Adkins and his attorney by which the phone was also dry and had no indication of moisture. Since the bag was originally sealed by the confiscating officer and later re-sealed by Officer Rodriguez, the bag showed no signs of tampering in any way.

Submitted for your information and disposition.

A handwritten signature of John F. Taitano.

John F. Taitano #971



GUAM POLICE DEPARTMENT
Arrested Person

12/10/09
Page 1

ASSIGNMENT RECEIVED:

2:10 PM 12/7/09

While at my current office (Rm#126 1st Floor Building #235) I received instructions to conduct computer forensic assistance relative to an Arrested Person complaint (ref. Cs#09-25982) from GPD Forensic Science Division's Chief, Capt. M.A. Babauta. Capt. Babauta instructed me to retrieve a Cellular Phone from GPD's Evidential Control Section (ECS) that was confiscated as evidence reference to the above mentioned complaint and to apply my forensic training in retrieving/verifying digital images that may or may not be stored on the cellular phone. I acknowledged and proceeded to GPD's ECS.

II. ARRIVED/BRIEFED:

2:30 PM 12/7/09

While at the ECS in Tiyan (1st Floor Building #231), I met with Property Control Officer John F. Taitano and briefed him as to the nature of my presence. PCO Taitano then indicated that he needs to verify my directives with Attorney James T. Mitchell at the Chief's Office to which the following was noted:

- That Attorney Mitchell did in fact assign Capt. Babauta the task of having myself (the undersigned investigator) conduct a limited forensic investigation reference to any digital images that may or may not reside in the cellular phone's memory.
- That Attorney Mitchell advised that he had received such instructions from the Civil Division of the ATTORNEY GENERAL'S OFFICE.
- That in addition to Attorney Mitchell's concurrence, Sgt. Mark A. Torre (Officer-in-Charge of Legal Section) also gave clearance to proceed with my task.

III. ITEM RECEIVED / RELINQUISHED:

3:15 PM 12/7/09

While at the same location (ECS), PCO Taitano relinquished the aforementioned cellular phone herein described as a:

**"Nokia" brand cellular phone
Model No: E71
Silver and Black in color**

The Item was packaged in a clear plastic zip-lock bag.

*Note: Please refer to the attached photocopy of the Custody Receipt for details.

**GUAM POLICE DEPARTMENT
CONFIDENTIAL**

PO3 Jesse P. Rodriguez
Officer Assigned

To be used for Law Enforcement purposes only
Not to be duplicated. Its contents are not to be distributed outside your agency.

OPEN

Case 1:09-cv-00029 Document 61 Filed 03/24/10 Page 4 of 110 **EXHIBIT(1)3**

Supervisor

*Capt. T.C. Santos 479
3/24/10*

IV. FORENSIC PROCEDURES CONDUCTED: 3:30 PM 12/7/09

While at my current office in Tiyan (Rm# 126 1st Floor Building #235, which during these procedures was secured with no access to unauthorized personnel), I began with the forensic portion of the investigation to which the following was done / noted:

1. Small incision in the plastic zip lock bag was made to extract the cellular phone.
2. No physical defects were noted at the time of retrieval.
3. Removal of the external memory module, which is located on the side of the phone, was done
 - a. External Memory module was noted to be a "SAN DISK" 1GB (gigabyte) MicroSD card (Secure Digital Flash memory card) – For storage capability.
4. Utilizing a GPD Forensic Laptop (Dell Latitude E6400 ATG with forensic software loaded) and HELIX v2.0 (a bootable live-linux based computer forensic tool kit from E-fense that mounts an operating system, hard drive or memory card without writing to the media) and a MicroSD card adapter a check of the external memory module (SAN DISK) was attempted.
 - a. 3:38 PM this date, It was noted that the memory card could not be mounted on the linux platform (Helix)... indicating that the memory card may be defective.
5. Utilizing the aforementioned GPD Forensic Laptop and WinHex Forensic v15.3 (a Windows operating system based computer forensic tool kit from X-Ways that can also mount an operating system, hard drive or memory card without writing to the media) and a MicroSD card adapter another check of the external memory module (SAN DISK) was attempted.
 - a. 3:58 PM this date, It was noted again that the memory card could not be "seen" by the software (WinHex Forensic)... again indicating that the memory card may be defective.
 - b. At about 4:00 PM this date, I contacted Attorney Mitchell via telephone and reported to him that the memory card was not readable.
 - c. I also indicated to him that the cell phone no longer held a charge and would not turn on without a charger.
6. Attorney Mitchell then gave the authorization for the undersigned officer to utilize the officer's personal cellular phone (Motorola V3M silver) which has the capability of reading a microSD memory module with negative results (nothing of an evidentiary nature relative to Digital images).
 - a. The memory card was being "read as" "card unformatted", this is indicative of either a defective module or a brand new unformatted memory card.

1
PO3 Jesse P. Rodriguez

Officer Assigned

Case 1:09-cv-00029 Document 61 Filed 03/24/10 Page 5 of 47
EX-14 (10/14)

OPEN

Capt T. C. Santos 999
Supervisor

7. The cell phone was then placed back into the plastic zip lock bag and sealed and endorsed by myself (the undersigned). *See Item #1 on photocopy of the custody receipt.

V. ANALYSIS CONCLUDED:

4:40 PM 12/7/09

While at the same location (Rm#126), It was concluded that no further analysis of the phone's internal memory could be conducted without a power supply for the cellular phone and that there is at this time no digital images to be retrieved from the external memory module.

VI. ITEM RETURNED:

4:55 PM 12/7/09

While at the ECS in Tiyan, I relinquished the aforementioned Cell Phone back to PCO Taitano for Safekeeping.

*Note: Please refer to the attached photocopy of the Custody Receipt for details.

VII. RECOMMENDATION:

I recommend that this supplement be attached to the original report as additional information.

NOTE: REMOVE AND REVERSE CARBONS BEFORE COMPLETING THIS SIDE.

16. CHAIN OF CUSTODY (continued)

ITEM NO.	DATE & TIME	RELINQUISHED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1	10/5/09 12:00PM	Name (type or print) PO3 A.J. KAMMINGA #503 Signature A-J-Kay	Name (type or print) E.C.S. Signature VAULT/BIN E	EVIDENCE & STORAGE
1	12-7-09 3:05pm	Name (type or print) E.C.S. Signature VAULT / BIN (E)	Name (type or print) P.C.O. JOHN F. TAITANO #971 Signature Taftano, J.F.	RETRIEVAL OF EVIDENCE
1	12-7-09 3:15pm	Name (type or print) P.C.O. JOHN F. TAITANO #971 Signature Taftano, J.F.	Name (type or print) PO3 J.P. RODRIGUEZ Signature A.R.	EVIDENCE ANALYSIS
1	12/7/09 4:55PM	Name (type or print) PO3 J.P. RODRIGUEZ #864 Signature	Name (type or print) J.F. TAITANO #971 Signature	EVIDENCE
1	12-7-09 5:15pm	Name (type or print) J.F. TAITANO #971 Signature	EVIDENCE VAULT BIN (E)	EVIDENCE STORAGE
1	3-10-2010 11:00am	Name (type or print) EVIDENCE VAULT BIN (E) Signature	Name (type or print) J.F. TAITANO #971 Signature	RETRIEVAL OF EVIDENCE

17. REMARKS

Reference to (09-25977) #1 Relinquished to Po. 3
 5th Rockaway Bay Division and Verbal
 Request Standing instruction by Mr. Jim White
 Capt. Batsona (Sgt/one) Sgt JP Robson or
 E.C.S. Sgt M. Torre or in written order
 Jefun. 12-9-21 12-7-09 3:15 pm

18. DISPOSAL ACTION

Indicate in disposal action column (on front), by letter code, type of action. CODES: (A) Returned to submitting agency (C) Superior Co
 (D) Destroyed (F) District Court (I) Returned to individual owner (M) Other method - explain in remarks.

If disposal action is (I), complete the following:

Release of article(s) indicated as item(s) No. _____ authorized by _____

James L. Atkins, rightful owner/authorized agent, hereby acknowledge receipt of
 Item(s) No. #1, as indicated on front, in good condition from E.C.S. Bin (E)
 Signature of Owner / Agent _____ Address _____ Date _____

If disposal action is (D), complete the following:

On _____, the following item(s) No. _____ were destroyed as authorized by _____

GUAM POLICE DEPARTMENT
EVIDENCE/PROPERTY CUSTODY RECEIPT

CHAIN OF CUSTODY CONTINUED ON REVERSE

E.C.S.

DO NOT WRITE IN THIS SPACE

613

09-25982

PRO 90. 153 LOG

VAULT / BIN E

EXHIBIT (1) 7

[Print](#)[Close](#)

RE: Cell Phone Analysis

From: Anita P. Arriola (anitaarriola@teleguam.net)

Sent: Mon 3/15/10 4:57 PM

To: 'James Mitchell' (cooljtm@hotmail.com)

Jim:

As I mentioned earlier, I would like to see the evidence analysis before filing the Stipulation with the court.

Anita P. Arriola

ARRIOLA, COWAN & ARRIOLA

259 Martyr Street, Suite 201

C&A Professional Building

Hagatna, Guam 96910

Tel: 671 477-9730

Fax: 671 477-9734

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From: James Mitchell [mailto:cooljtm@hotmail.com]

Sent: Monday, March 15, 2010 2:20 PM

To: Anita Arriola

Subject: RE: Cell Phone Analysis

Hello Anita:

The draft Stipulation looks fine.

In addition to the evidence analysis, I am having an incident report prepared regarding the cell phone. When you get these documents, you will find that at all relevant times GPD maintained the phone in a climate controlled environment. It would be helpful if Data Recovery Specialist could determine the date the cell phone received water damage.

Thanks,

Jim

From: anitaarriola@teleguam.net

To: cooljtm@hotmail.com

Subject: RE: Cell Phone Analysis

Date: Fri, 12 Mar 2010 16:17:31 +1000

Jim:

Enclosed please find a draft Stipulation. Under the local rules, I will need to submit a separate Order.

Please let me know your comments/revisions to the stipulation.

Anita P. Arriola

ARRIOLA, COWAN & ARRIOLA

259 Martyr Street, Suite 201

C&A Professional Building

Hagatna, Guam 96910

Tel: 671 477-9730

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From: James Mitchell [mailto:cooljtm@hotmail.com]**Sent:** Friday, March 12, 2010 3:19 PM**To:** Anita Arriola**Subject:** RE: Cell Phone Analysis

I will have the analysis to you early next week. Data Recovery Specialist is fine.

Jim

From: anitaarriola@teleguam.net

To: cooljtm@hotmail.com

Subject: RE: Cell Phone Analysis

Date: Fri, 12 Mar 2010 11:11:31 +1000

Dear Jim:

I have located a company called Data Recovery Specialist in Chatworth, California. The contact person is Dan Strizich. Since we are under a court order to preserve the digital images and the cell phone. I will prepare a Stipulation and Order for the judge to sign allowing the cell phone and memory card to be sent to DRS. It would be helpful to have the report before we send everything to California.

Anita P. Arriola

ARRIOLA, COWAN & ARRIOLA

259 Martyr Street, Suite 201

C&A Professional Building

Hagatna, Guam 96910

Tel: 671 477-9730

Fax: 671 477-9734

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From: James Mitchell [mailto:cooljtm@hotmail.com]**Sent:** Friday, March 12, 2010 11:03 AM**To:** Anita Arriola**Subject:** Cell Phone Analysis

Dear Anita:

I agree that you and Mr. Adkins are entitled to a report of evidence analysis. I have someone working on that. I also agree to an expert to determine when the photographs were deleted; and especially agree for an expert to attempt to retrieve the photographs. We are very much interested in seeing the photographs. Just let me know when you identify an expert. I am pretty much sure that I will have no objections.

Jim

Hotmail: Powerful Free email with security by Microsoft. [Get it now.](#)

Hotmail: Trusted email with powerful SPAM protection. [Sign up now.](#)

Your E-mail and More On-the-Go. Get Windows Live Hotmail Free. [Sign up now.](#)